

**Analysis of Proposed Changes to Secretary of State Rules 37 and 45
Regarding Voting System Standards and Testing**

Submitted by

**Arapahoe County Clerk and Recorder
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After review of the proposed changes and monitoring of the first public meeting concerning these proposals, Arapahoe County has some general observations and then comments on specific portions of the proposed rules. We appreciate the opportunity to provide comments.

Rule 37 – No comments.

Rule 45:

General Comments

1. We find it appropriate that the State is amending the rules to reflect the adoption of the VSS-2002 by the EAC. We also are especially pleased to see that the State of Colorado has formally provided for the use of evaluations and testing done by other states. We believe this will be very valuable to Colorado in the future.

2. We are troubled by the lack of references to any involvement in this process by County Election Officials. As they will be the ones purchasing and operating the various systems, once approved, it would seem appropriate to include some in the certification testing process, perhaps as part of the Secretary of State's team, or helping develop the test plan, or observing and offering independent evaluations for consideration by the Secretary of State. As previous certifications have found, systems may be technologically sound without being operationally sound, and these tests are described in this rule as "functional" tests. Those who know functionality best are those in the local election offices.

Section 45.3 Certification Process Overview and Timeline

Comment: Subsection (b) references the preparation of a certification test plan. It might be helpful to reference the later section (45.6.2.) where standards for the test plan are included.

Section 45.4 Application Procedures

Comment: Subsection 45.4.6 states that "...the trusted build shall be provided by the EAC." Since the EAC is a Federal Agency not subject to State rules, and the intent here is that the vendor make arrangements with the EAC so the State may get the trusted build, it might be better to change "provided by" to "secured from".

Section 45.5 Voting System Standards

Comment: Subsection 45.5.2.2 (c) sets the performance standard for Central Count Optical Scan Ballots at 100 ballots per hour. If this is referring to the throughput when tabulating ballots on a central count scanner machine, it is an extremely low threshold. If it is referring to precinct counters being used in a central count environment, that should be clear; and an additional minimum standard should be included for ballot tabulators designed as for central count optical scan.

Comment: Subsection 45.5.2.3.4. deletes references to compliance with the Voting Rights Act of 1965 as it pertains to preparing ballots in languages other than English and changes the requirement to "...shall be capable of formatting ballot styles in English and Spanish." Perhaps some accommodation should be made for a vendor post certification retrofit of the equipment if a jurisdiction is required to prepare ballots in a language other than English or Spanish following the decennial census.

Comment: Subsection 45.5.2.4.3 requires voting system providers to have completed an "independent analysis" of the system. The State might consider establishing a list of testing entities it could support and require the independent analysis to be done by one of those entities, chosen by the Secretary of State, with the costs being reimbursed by the vendor to the Secretary for the cost of the independent analysis. This takes the vendor out of the position of having chosen a testing entity.

Comment: Subsection 45.5.2.6.1(d) (i) states that systems submitted must have all operating systems "...hardened to specifications developed by the voting system provider." This appears to leave no opportunity for the Secretary of State to object if the hardening specifications developed by the provider are inadequate. The assumption here may be that such specifications will have been evaluated at the Federal level, but it might be clearer if there were some reference to a standard other than that set by the vendor. The public hearing on October 2, indicated that the vendor would be required to use an existing standard and identify it or demonstrate how they exceed it. The rule as written does not specifically require that. Additional work is needed to accomplish the stated goal here.

Comment: Subsection 45.5.2.8.1(d) makes a dramatic change in what is required for accessibility on voting systems. We are unclear, with the deletion of the after March 2008 date, whether these standards would only apply to systems being proposed for certification in the future, or whether there is some implication for previously certified systems currently in use.

Comment: Subsection 45.6.2.1.5 states

The voting system provider is ~~not~~ required to have a representative be present for during the functional testing to witness the testing and to, but shall provide the test team with a point of contact for technical support. ~~After the delivery, unpacking and initial inspection of the equipment for shipping damage and missing components, the representative shall be prohibited from operating or touching the equipment until testing is complete. The representative will be available to quickly and accurately respond to questions from the test team in order to minimize delays and errors in testing.~~

It would seem to be appropriate to require the vendor technician to setup the equipment and certify to the Secretary of State that the equipment is operating, functional and ready for testing. This would require some minimal testing by the technician prior to turning the system over to the Secretary of State. We also believe the technician should be available at all times for consultation with the testers.

Comment: Subsection 45.6.2.1.7 - See previous comments on standards for hardening equipment.

Comment: Subsection 45.6.2.3.9 requires the Secretary of State to prepare one or more ballots with a variety of marking devices. We would prefer to see the current 300 ballots to be marked requirement remain, however if a change is to be made we suggest the absolute minimum be 50 ballots and the requirements include marking a portion of the ballots with pencil.